

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

TEXAS INDIGENOUS COUNCIL,
ANTONIO DIAZ,

Plaintiff,

v.

G.D. SIMPKINS, G. ANDRADE, D.
JOHNSON, RANDALL K. TUCKER,

Defendant.

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Civil Action No. SA:11-CV-00315-XR

ORDER

On February 2, 2012, the Court held a hearing in the above-captioned case. For the reasons stated in Court, Defendants' Motion for Summary Judgment (docket no. 46) is GRANTED. With regard to Plaintiff's federal constitutional claim, the Court concludes that summary judgment is appropriate because Plaintiff failed to properly plead that claim under 42 U.S.C. §1983. As to Plaintiff's Texas constitutional claim, Defendants have propounded a defense of official immunity, and there is no competent summary judgment evidence at this time to overcome the claim of official immunity, and summary judgment is appropriate.

Also for the reasons stated in Court, Plaintiff's Motion to Reconsider Magistrate Judge Nowak's Order on Motion for Leave to File (docket no. 59) is DENIED. Magistrate Judge Nowak denied the motion for leave to amend the complaint. The Court concludes that the Magistrate Judge's decision was not clearly erroneous given the facts of this case.

Accordingly, the above-captioned case is DISMISSED. The Clerk is instructed to issue a Judgment that Plaintiff take nothing. Defendant is awarded its costs of court. If Defendants wish to pursue these costs, Defendants shall file a Bill of Costs in the form prescribed by the Clerk within

fourteen days of this Order.

It is so ORDERED.

SIGNED this 16th day of February, 2012.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', is written over a horizontal line.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE